

REMARKS/ARGUMENTS

Claims 3, 49 and 77 have been canceled.

Claims 8-29, 64-76, and 78-79 stand rejected under 35 U.S.C. 101 as claiming the same invention as claims 1-25 and 57 of U.S. Patent 6,524,348. This rejection is respectfully traversed.

Statutory double patenting is discussed in section 804 of the M.P.E.P at page 800-20.

A reliable test for double patenting under 35 U.S.C. 101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent. *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970). Is there an embodiment of the invention that falls within the scope of one claim, but not the other? If there is such an embodiment, then identical subject matter is not defined by both claims and statutory double patenting does not exist. For example, the invention defined by a claim reciting a compound having a “halogen” substituent is not identical to or substantively the same as a claim reciting the same compound except having a “chlorine” substituent in place of the halogen because “halogen” is broader than “chlorine.”

Let's apply this analysis to the claims in the application and the claims in the patent.

Each of claims 1-25 and 57 of U.S. Patent 6,524,348 requires “a sufficient amount of secondary oxidant to induce an increase in carboxyl substitution in the cellulose of at least 2 meq/100g.” The secondary oxidant is further characterized in claims 26-28.

Claims 8-29, 64-76, and 78-79 of the present application require ”a secondary oxidant selected from chlorine dioxide and latent sources of chlorine dioxide in a sufficient amount to induce an increase in carboxyl substitution in the carbohydrate of at least 2 meq/100 g” [emphasis added].

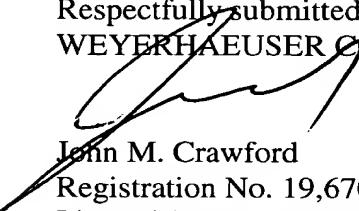
This is analogous to the halide/chlorine example in the M.P.E.P. As to the secondary oxidant, the claims of the patent are broader than the claims of the application. Identical subject matter is not defined by the claims of the patent and the claims of the application.

Statutory double patenting does not exist.

CONCLUSION

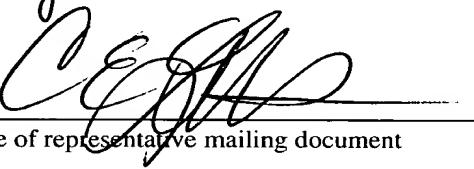
In summary, reconsideration and allowance of claims 8-29, 64-76, and 78-79 is respectfully requested.

Respectfully submitted,
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